

EXHIBIT 173

Miller, James E.

July 30, 2007

Chicago, IL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
-----) Civil Action
This document relates to:) No. 01-12257-PBS
United States of America,)
ex. rel. Ven-a-Care of the)
Florida Keys, Inc.,) Hon. Patti Saris
vs.)
Abbott Laboratories, Inc.,) Magistrate Judge
CIVIL ACTION NO. 06-11337-PBS) Marianne Bowler
-----X

VIDEOTAPED DEPOSITION OF

JAMES E. MILLER

CHICAGO, IL

JULY 30, 2007

Henderson Legal Services
202-220-4158

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<p>1 2 Videotaped deposition of JAMES E. MILLER, 3 called by the Plaintiffs for examination, taken 4 pursuant to notice, agreement and by the provisions of 5 the Rules of Civil Procedure for the United States 6 District Courts pertaining to the taking of 7 depositions, taken before DEBORAH HABIAN, a Notary 8 Public within and for the County of Cook, State of 9 Illinois, and a Certified Shorthand Reporter of said 10 State, at the offices of Katten Muchin Rosenman, 11 525 West Monroe Street, 19th Floor, Chicago, Illinois, 12 on the 30th day of July, 2007, at 9:12 a.m. 13 14 15 16 17 18 19 20 21 22</p>	<p>1 APPEARANCES: (CONTINUED) 2 3 BERGER & MONTAGUE, P.C. 4 BY: SUSAN SCHNEIDER THOMAS, ESQ. 5 1622 Locust Street 6 Philadelphia, Pennsylvania 19103 7 (215) 875-3000 8 on behalf of the Realtor, Ven-a-Care; 9 10 11 WEXLER TORISEVA WALLACE, LLP 12 BY: CHRISTOPHER J. STUART, ESQ. 13 55 West Monroe Street 14 Suite 300 15 Chicago, Illinois 60602 16 (312) 346-2222 17 on behalf of the State of Arizona 18 and the MDL Plaintiffs; 19 20 21 22 (CONTINUED)</p>
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<p>1 APPEARANCES: 2 3 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE 4 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE 5 BY: ELISEO SISNEROS, ESQ. 6 DEPUTY ATTORNEY GENERAL 7 110 West A Street 8 No. 1100 9 San Diego, California 92101 10 (619) 688-6043 11 on behalf of the State of California; 12 13 U.S. DEPARTMENT OF JUSTICE 14 COMMERCIAL LITIGATION, FRAUD 15 BY: REBECCA A. FORD, ESQ. 16 601 D Street, N.W. 17 Patrick Henry Building - 9133 18 Washington, D.C. 20044 19 (202) 514-1511 20 on behalf of the United States; 21 22 (CONTINUED)</p>	<p>1 APPEARANCES: (CONTINUED) 2 3 JONES DAY 4 BY: TINA M. TABACCHI, ESQ. 5 77 West Wacker Drive 6 Chicago, Illinois 60601-1692 7 (312) 782-3939 8 on behalf of the Defendants; 9 10 KATTEN MUCHIN ROSENMANN, LLP 11 BY: GIL M. SOFFER, ESQ. 12 DEAN V. HOFFMAN, ESQ. 13 525 West Monroe Street 14 Chicago, Illinois 60661-3693 15 (312) 902-5200 16 on behalf of the deponent. 17 18 19 ALSO PRESENT: 20 ANTHONY MICHELETTO, VIDEOGRAPHER 21 HENDERSON LEGAL SERVICES 22</p>

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<p>1 EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Miller 1169, 11/26/96 memoranda..... 216</p> <p>4 Exhibit Miller 1170, ABT 53140 to ABT 53142.... 264</p> <p>5 Exhibit Miller 1171 ABT 53217 to ABT 53238.... 266</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 MR. STUART: Christopher Stuart, Wexler</p> <p>2 Toriseva Wallace representing the State of</p> <p>3 Arizona and the MDL Plaintiffs.</p> <p>4 MS. TABACCHI: Tina Tabacchi from Jones</p> <p>5 Day on behalf of the Defendants.</p> <p>6 MR. SOFFER: Gil Soffer of Katten</p> <p>7 Muchin Rosenman on behalf of the deponent James</p> <p>8 Miller.</p> <p>9 THE WITNESS: James Miller.</p> <p>10 THE VIDEOGRAPHER: The court -- the</p> <p>11 court reporter is Deborah Habian from Henderson</p> <p>12 Legal Services.</p> <p>13 Please swear in the witness.</p> <p>14 THE REPORTER: Please raise your right</p> <p>15 hand, Mr. Miller.</p> <p>16 (Witness sworn.)</p> <p>17 THE REPORTER: Thanks.</p> <p>18 MS. TABACCHI: Before we begin, I just</p> <p>19 need to interject my standard objection to the</p> <p>20 notice of the Class Plaintiffs as untimely.</p> <p>21 MR. SISNERO: Morning, Mr. Miller.</p> <p>22 THE WITNESS: Morning.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. When you worked for Ross Labs, was that 2 right out of college? 3 A. No. I worked -- I'm sorry. I worked 4 for Ford Motor Company in Claycomo, Missouri. 5 Q. How long did you work for Ford? 6 A. About nine months. 7 Q. And what did you do for them? 8 A. I was a Production Foreman. 9 Q. After Ford, you went to Ross? 10 A. Yes, sir. 11 Q. And -- well, let me ask this. When did 12 you graduate from Wilmington? 13 A. December 1968. 14 Q. When did you start working for Ford? 15 A. January of 1969. 16 Q. So you went over to Ross sometime in 17 the fall of '69? 18 A. Yes, sir. 19 Q. And you remained at Ross until you 20 started at Abbott? 21 A. No, MBA program. I went full-time to 22 the MBA program at Wright State University.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Oh, I'm sorry. That's right there. 2 A. Yeah. 3 Q. Then what did you do between -- well, 4 when did you finish your master's, what year -- 5 what month in '71? 6 A. I do not remember. 7 Q. Did -- after completing your master's, 8 did you go directly to Abbott Labs? 9 A. No. 10 Q. What did you do next? 11 A. When I was getting my master's, I also 12 was approached by National Cash Register and went 13 to work at National Cash Register while I was 14 finishing my master's in Dayton, Ohio. 15 Q. How long did you work for NCR? 16 A. I worked for them until December '72 17 when I went to work for Abbott. 18 Q. What did you do for NCR? 19 A. I was a Financial Analyst -- 20 Q. Any specific duties? 21 A. -- in the factory. Again, I focused on 22 budgeting and cost reductions.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. I see. So you worked for Ross from '69 2 until? 3 A. '70. 4 Q. What did you do for Ross? 5 A. I was a Financial Analyst in the 6 Distribution Department. 7 Q. What were your duties? 8 A. I worked on determining the optimum 9 location for distribution points and negotiating 10 with carriers' freight rates. 11 Q. So your focus was to save the company 12 money? 13 A. Yes, sir. 14 Q. All right, after that, then you went to 15 school at Wright State in Dayton to get your 16 master's -- 17 A. Yes. 18 Q. -- In Corporate Finance? 19 A. Yes. 20 Q. And thereafter, is -- well, when did 21 you complete that program? 22 A. In 1971.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. All right, thereafter, you went 2 to Abbott? 3 A. (Witness nodding.) 4 Q. Correct? 5 A. Correct. 6 Q. All right. Let's talk a little bit 7 about your career at Abbott. You have there from 8 -- in your CV Exhibit Miller 1160 a list of 9 positions you held from 1972 to 2003. You see 10 that? 11 A. Correct. 12 A. Yes. 13 Q. Is that a full and complete list of all 14 the positions that you held at Abbott during this 15 period of time? 16 A. Yes. 17 Q. So when you started it -- at Abbott, 18 you started as a Cost Accounting Manager here in 19 Chicago? 20 A. North Chicago. 21 Q. North Chicago. I'm from the West. 22 Is that correct?</p>

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<p style="text-align: right;">Page 26</p> <p>1 MR. SOFFER: You may answer if you can.</p> <p>2 THE WITNESS: I was primarily</p> <p>3 responsible to assist line management in the</p> <p>4 identification of causes of cost variances versus</p> <p>5 budget.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay. All right, then from Hospital --</p> <p>8 then from FP & A at the Hospital Products</p> <p>9 Division, you became Division Controller For</p> <p>10 Corporate Materials Management in 1982; is that</p> <p>11 right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay, what is that?</p> <p>14 A. Corporate Materials Management was a</p> <p>15 service division that distributed -- let me back</p> <p>16 up -- operated distribution centers and trucks to</p> <p>17 move product from plants to distribution centers</p> <p>18 and from distribution centers to major customers.</p> <p>19 Q. And what was your responsibility?</p> <p>20 A. I was again responsible for the</p> <p>21 accuracy and the integrity of the books for that</p> <p>22 division.</p>	<p style="text-align: right;">Page 28</p> <p>1 the context of Medicare and Medicaid?</p> <p>2 A. There were DRGs.</p> <p>3 Q. DRG stands for?</p> <p>4 A. Diagnosis related codes -- diagnosis</p> <p>5 related groups.</p> <p>6 Q. Well, what products or services were</p> <p>7 you setting Medicaid/Medicare prices for?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: If you're able to answer,</p> <p>10 you may.</p> <p>11 THE WITNESS: We were in the total</p> <p>12 parental nutrition business, the total enteral</p> <p>13 nutrition business, and the renal care business.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. These are products and services that</p> <p>16 involve infusion therapies; is that right?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: Some of these project --</p> <p>19 well --</p> <p>20 MR. SOFFER: You can answer.</p> <p>21 THE WITNESS: Some of these products</p> <p>22 are injected in human beings, and some of them</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. And then from there, you got</p> <p>2 promoted to Division Controller - Home Care in</p> <p>3 '83, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Were your duties functionally the same</p> <p>6 as they had been at the Corporate Materials</p> <p>7 Management?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: You may answer if you can.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. All right, let me just ask it this way.</p> <p>12 What were your duties as Division Controller At</p> <p>13 Home Care?</p> <p>14 A. I was responsible for, again,</p> <p>15 maintaining the integrity and accuracy of the</p> <p>16 books for that division and for establishing the</p> <p>17 pricing for our products when we billed Medicare,</p> <p>18 Medicaid and private insurance companies.</p> <p>19 Q. How did you do that?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. How -- how would you price products in</p>	<p style="text-align: right;">Page 29</p> <p>1 are fed orally to human beings.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. When you would -- what did you call</p> <p>4 that, DRGs? I'm sorry, DRGs?</p> <p>5 A. Right.</p> <p>6 Q. When you said pricing -- well, can you</p> <p>7 explain to me how you would set a pricing through</p> <p>8 the DRGs?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 MR. SOFFER: You can answer if you're</p> <p>11 able.</p> <p>12 THE WITNESS: Abbott was a late entrant</p> <p>13 in this market, and there were lots of</p> <p>14 competitive pricing available.</p> <p>15 We were setting the product for the</p> <p>16 individual components that went into a therapy.</p> <p>17 Like if you were on home enteral nutrition, you</p> <p>18 would take a product like Ensure, you would need</p> <p>19 a tube and other ancillary supplies. We set the</p> <p>20 prices for those individual supplies that went</p> <p>21 within a diagnosis group.</p> <p>22 BY MR. SISNEROS:</p>

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<p>1 Q. I see. You -- you weren't responsible 2 for -- for a pharmaceutical product. You were 3 responsible for equipment? 4 A. We sold no pharmaceutical products. 5 Q. You sold equipment? 6 A. Yes. 7 Q. Okay. All right, then from there, you 8 went to, again, Assistant Corporate Controller - 9 FP & A? 10 A. Right, correct. 11 Q. And your duties there? 12 A. Abbott has a budget cycle three times a 13 year, and all the groups submit budgets. My job 14 was to help line management review, analyze and 15 make recommendations. 16 Q. What specific areas of budgeting did 17 you review -- 18 MS. TABACCHI: Object to the form. 19 BY MR. SISNEROS: 20 Q. (Continuing) -- as Assistant Corporate 21 Controller of FP & A? 22 MR. HOFFMAN: You can answer.</p>	<p>1 A. I would have worked with the division 2 controller. 3 Q. Do you recall who that would have been? 4 A. No. 5 Q. Can you give me an example of what you 6 would have been reviewing with a representative 7 from the Hospital Products Division? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: It could be as simple as 10 the wage -- the annual merit wage increase they 11 built in, the annual wage progression they built 12 in to -- could. 13 BY MR. SISNEROS: 14 Q. Well, let me ask you this specific 15 question. Would you -- would your duties have 16 required for a review, for example, of product 17 price increases? 18 A. No. 19 Q. Was there anyone in the controller's 20 office who would have been responsible for that 21 type of review? 22 MS. TABACCHI: Object to form.</p>
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<p>1 THE WITNESS: Every division and every 2 corporate staff function submitted a budget, a 3 budget -- yeah, submitted a budget. 4 BY MR. SISNEROS: 5 Q. So you reviewed all aspects of the 6 business for every division? 7 MS. TABACCHI: Object to the form. 8 MR. SOFFER: You can answer if you can. 9 THE WITNESS: I assisted line 10 management in that task. 11 BY MR. SISNEROS: 12 Q. Those that you supervised? 13 A. No, accounting does not supervise 14 operating units. 15 Q. Well, this particular position then, 16 your duties required that you worked with 17 individuals from the different divisions? 18 A. Yes, and corporate management. 19 Q. And corporate management. 20 A. (Witness nodding.) 21 Q. Did you have a contact in Hospital 22 Products Division?</p>	<p>1 THE WITNESS: At the corporate level? 2 BY MR. SISNEROS: 3 Q. Yes. 4 A. No. 5 Q. At the divisional level? 6 MS. TABACCHI: Object to the form. 7 MR. SOFFER: You can answer if you 8 know. 9 THE WITNESS: Yes. 10 BY MR. SISNEROS: 11 Q. And at the divisional level, who had 12 responsibility for reviewing price increases? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: At that point in time, I 15 cannot tell you. I -- I do not know. 16 BY MR. SISNEROS: 17 Q. And, actually, I'm not looking for an 18 individual's name. I'm looking for a position. 19 Who -- what position in -- within a 20 division would be responsible for reviewing that 21 division's increase -- a price increase of 22 product?</p>

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<p style="text-align: right;">Page 34</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: You can answer if you know</p> <p>3 the answer to the question.</p> <p>4 THE WITNESS: You -- you can -- Abbott</p> <p>5 was six companies -- is six companies. Well, I</p> <p>6 don't know what it is today. When I was there,</p> <p>7 it was six companies.</p> <p>8 You cannot generically say this</p> <p>9 individual in this division is responsible for</p> <p>10 that. They're all organized differently.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. So the responsibility for that duty</p> <p>13 within that division would -- would have been</p> <p>14 identified within the division?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Thereafter, you went to Area Finance</p> <p>17 Director - Europe International?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Were you actually in Europe?</p> <p>20 A. No.</p> <p>21 Q. Okay, what were your duties?</p> <p>22 A. My first duty was to close the Paris</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. Consulting?</p> <p>3 A. Yes.</p> <p>4 Q. What -- do you have your own company?</p> <p>5 A. No.</p> <p>6 Q. What -- who do you consult for?</p> <p>7 A. From a Fortune 500 to a baby company.</p> <p>8 Q. And pharmaceutical companies?</p> <p>9 A. No, sir.</p> <p>10 Q. All right. After a stint as Division</p> <p>11 Vice President - Finance International, you went</p> <p>12 -- became Divisional Vice President - Corporate</p> <p>13 Planning?</p> <p>14 A. Yes, sir.</p> <p>15 Q. What were your duties there?</p> <p>16 A. The primary duties were product</p> <p>17 acquisition either through purchase or licensing.</p> <p>18 Q. Okay. What -- what -- give me some</p> <p>19 examples of what you did --</p> <p>20 A. Um-hum.</p> <p>21 Q. -- as Corporate Planning product</p> <p>22 acquisition.</p>
<p style="text-align: right;">Page 35</p> <p>1 office and bring it back.</p> <p>2 Q. Was that a cost saving?</p> <p>3 A. A million dollars.</p> <p>4 Q. What else did you do for them?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Well, what else did you do as Division</p> <p>8 Vice President of Finance International?</p> <p>9 A. I was responsible for the accuracy and</p> <p>10 integrity of the books at the -- financial books</p> <p>11 at the division level and each of the hundred</p> <p>12 affiliates.</p> <p>13 Q. And I see that during this period of</p> <p>14 time you also became a CPA?</p> <p>15 A. Yes, sir. Well, I was a CPA before I</p> <p>16 went to International.</p> <p>17 Q. I see. That's correct. Are you</p> <p>18 currently a CPA?</p> <p>19 A. I am a retired CPA.</p> <p>20 Q. Okay, are you -- are you doing any kind</p> <p>21 of work presently?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 37</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: You may answer if you can.</p> <p>3 THE WITNESS: Okay. I had -- let's</p> <p>4 back up.</p> <p>5 Our job was to analyze business areas</p> <p>6 we were not in to see if they would fit with the</p> <p>7 overall Abbott portfolio and to find products at</p> <p>8 small companies generally that would be licensed</p> <p>9 that would complement Abbott's existing strengths</p> <p>10 in its product portfolio.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. You were looking to license products</p> <p>13 developed by others?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Would that include looking for products</p> <p>16 that had been patented by other companies?</p> <p>17 A. Yes.</p> <p>18 Q. Would it include products that had been</p> <p>19 patented by other institutions, say,</p> <p>20 universities?</p> <p>21 A. Yes.</p> <p>22 Q. This is something I guess you did for a</p>

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<p style="text-align: right;">Page 38</p> <p>1 couple of years?</p> <p>2 A. Yes.</p> <p>3 Q. In your -- in this position, about how</p> <p>4 many products did you license from other</p> <p>5 institutions?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Other institutions?</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Universities, other companies.</p> <p>10 A. Oh.</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. Let me -- let me rephrase the question.</p> <p>14 You've testified that as part of your</p> <p>15 duties, you were looking for a product that may</p> <p>16 have been patented by another company or other</p> <p>17 institutions like a university, correct?</p> <p>18 A. Um-hum.</p> <p>19 Q. Yes?</p> <p>20 A. Yes.</p> <p>21 Q. And my question is, to your best of</p> <p>22 your recollections, how many products did you</p>	<p style="text-align: right;">Page 40</p> <p>1 - as Division Vice President - Corporate Planning</p> <p>2 get involved in the licensing of a product that</p> <p>3 had not been manufactured by Abbott?</p> <p>4 A. Yes.</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Could you give me some examples?</p> <p>8 A. Yeah.</p> <p>9 Q. Please for the record give me some</p> <p>10 examples.</p> <p>11 A. There was a product called Synagis</p> <p>12 marketed by Ross Division, which was -- which is,</p> <p>13 I assume -- I don't know about -- it's -- the</p> <p>14 manufacturer's Medimmune.</p> <p>15 Q. Okay, there were others?</p> <p>16 A. Oh, yeah.</p> <p>17 Q. All right. And so my question is with</p> <p>18 respect to your duties at this time as Division</p> <p>19 Vice President of Corporate Planning, you were</p> <p>20 concerned with budgets for acquiring product from</p> <p>21 other companies or institutions and licensing</p> <p>22 them through Abbott; is that accurate?</p>
<p style="text-align: right;">Page 39</p> <p>1 license for Abbott --</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. (Continuing) -- from other</p> <p>5 institutions?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 MR. SOFFER: If you're able, you may</p> <p>8 answer.</p> <p>9 THE WITNESS: Well, let me -- let me</p> <p>10 rephrase, okay?</p> <p>11 We would identify a product either with</p> <p>12 or without a division. Corporate does not market</p> <p>13 -- I guess -- corporate really doesn't market</p> <p>14 products. Divisions sell products at Abbott. So</p> <p>15 -- can I give a real example?</p> <p>16 MR. SOFFER: Why don't we have the</p> <p>17 question asked again.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. Well, look, let me ask this.</p> <p>20 MR. SOFFER: Go ahead.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Did Abbott -- did you at this time at -</p>	<p style="text-align: right;">Page 41</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I would say that we were</p> <p>3 concerned with licensing products, not budgets.</p> <p>4 Our job was to identify and to assist the</p> <p>5 divisions in licensing or acquiring products. We</p> <p>6 did not have the budgets.</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. Was cost a consideration in that</p> <p>9 process of acquiring those products that you</p> <p>10 would license?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Every -- every product</p> <p>13 had a P & L prepared for it.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. What's --</p> <p>16 A. A profit and loss statement when you</p> <p>17 had -- when you went to license it.</p> <p>18 Q. All right, thereafter, you went to --</p> <p>19 by the way, when you were Division Vice President</p> <p>20 of Corporate Planning, who was your immediate</p> <p>21 supervisor?</p> <p>22 A. During the period of time I was there,</p>

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<p style="text-align: right;">Page 98</p> <p>1 this memo identifying points to be discussed at 2 the next -- or, rather, strike that. 3 He is identifying matters that members 4 want to discuss at the next Medicare Working 5 Group meeting, correct? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: That's as stated. 8 BY MR. SISNEROS: 9 Q. And one of the bullet points that he 10 brings up is they -- someone wants "to discuss 11 average wholesale price versus actual cost 12 issue." 13 Do you see that? 14 A. That is what's stated. 15 Q. Do you know what is meant by "average 16 wholesale price"? 17 A. Do I know what's -- no. 18 Q. You do not know? You never heard that 19 term before? 20 A. I've read the term. 21 MS. TABACCHI: Object to the form. 22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 100</p> <p>1 deposition. 2 Could you please review that? 3 A. (Witness reviewing document.) 4 Q. Have you had a chance to review it? 5 A. Yes. 6 Q. Mr. Miller, that is an undated copy of 7 handwritten notes on what appears to be a pad 8 "From the desk of James E. Miller." Do you see 9 that? 10 A. Correct. 11 Q. Is that -- is that you? 12 A. That's me. 13 Q. And is that your handwriting? 14 A. That is my handwriting. 15 Q. Could you please -- who is it addressed 16 to? 17 A. Rich Rieger. 18 Q. And -- and could you please read into 19 the record what you -- what is -- you've written 20 down in this handwritten message? 21 A. "Medicare allowable equals AWP. 22 Medicare pays physician 80% of Medicare</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. You've read the term? 2 A. (Witness nodding.) 3 Q. What do you mean you've read the term? 4 A. It's in newspapers, it's in magazines. 5 It's a common term. 6 Q. You have no idea how it's defined? 7 A. I've never been responsible for its 8 calculation or setting. 9 Q. Well, no, I understand that. My 10 question is do you know what it is? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: No. 13 In 52706, there is a definition. 14 MR. SISNEROS: We'll get to that in a 15 minute. 16 THE WITNESS: Okay, fine. 17 (Exhibit Miller 1165 was marked 18 for ID) 19 BY MR. SISNEROS: 20 Q. All right, I am handing to you for your 21 review what I've -- what's been marked and 22 identified as Exhibit Miller 1165 to your</p>	<p style="text-align: right;">Page 101</p> <p>1 allowable. AWP's equals acquisition cost plus 20 2 to 25%." 3 Q. And going to that first line where you 4 wrote, "Medicare allowable equals AWP," do you 5 mean by that that that is the amount that 6 Medicare pays or reimburses a provider? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: I have no idea what this 9 buck slip was in relationship to. 10 BY MR. SISNEROS: 11 Q. Well, okay, but that wasn't my question 12 if what you wrote down was in -- what you wrote 13 down was in relationship to. But my question was 14 "Medicare allowable," what does that mean to you? 15 A. It says, "Medicare allowable equals 16 AWP." 17 Q. And this note, it was -- it was 18 directed at Mr. Rieger, who you supervised; is 19 that correct? 20 A. That is correct. 21 Q. Is it fair to say that this was 22 information you were providing him?</p>

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Henderson Legal Services
202-220-4158

Miller, James E.

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Chicago, IL

<p style="text-align: right;">Page 106</p> <p>1 memo.</p> <p>2 A. Oh, okay fine.</p> <p>3 Q. Let's go to that paragraph --</p> <p>4 A. Okay.</p> <p>5 Q. -- the last paragraph of ABT 52808.</p> <p>6 In there, Mr. Rieger is telling the</p> <p>7 Medicare Working Group that he is attaching two</p> <p>8 documents, one relating to AWP, and an article</p> <p>9 relating to President Clinton's '98 budget</p> <p>10 proposal; is that right?</p> <p>11 A. That's what it says.</p> <p>12 Q. Okay, and if Mr. -- and earlier, I'd</p> <p>13 asked you if -- in the normal course of business</p> <p>14 if Mr. Rieger sent out a memo such as this to the</p> <p>15 Working Group, including you, you know, would you</p> <p>16 normally have received it, and I believe you</p> <p>17 said, "Yes." Is that right?</p> <p>18 A. That is correct.</p> <p>19 Q. And if he had attached -- if he had</p> <p>20 attachments to his memo, would you normally have</p> <p>21 reviewed them?</p> <p>22 A. It depends on how voluminous they were.</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. And if you could review at the top of</p> <p>4 52810, one of the articles attached by Mr. Rieger</p> <p>5 to his memo, the -- basically what would be the</p> <p>6 second paragraph starting with, "Health News</p> <p>7 Daily via Individual, Inc." Do you see that, the</p> <p>8 beginning of that paragraph?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And it's an introduction paragraph. Do</p> <p>11 you see where they are basically summarizing</p> <p>12 that, "The new Medicare outpatient drug coverage</p> <p>13 be based on actual cost rather than AWP." Do you</p> <p>14 see -- do you see what that mem -- see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay, earlier in your testimony, --</p> <p>17 well, strike that.</p> <p>18 Now, if you go back to ABT 5808, the</p> <p>19 beginning of Mr. Rieger's January 15th, 1997</p> <p>20 memo, and look at the first bullet point there,</p> <p>21 "Discussed average wholesale price versus actual</p> <p>22 cost issue," do you see that?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. I know what you mean. But do you</p> <p>2 believe that -- if you turn over to Page 52810 --</p> <p>3 A. 52810.</p> <p>4 Q. -- which sequentially follows the end</p> <p>5 of his memo, 52809. That's the end of Mr.</p> <p>6 Rieger's memo, and then the attachment is 52810.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And they're talking about "President</p> <p>10 Clinton's expected proposed Medicare outpatient</p> <p>11 drug coverage." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay, and if you look at -- just look</p> <p>14 to the next page, that particular article ends at</p> <p>15 52811. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. All right, with -- with respect to the</p> <p>18 two-page article, it would -- the attached</p> <p>19 article would have been only two pages. Was it</p> <p>20 your normal practice to review small articles</p> <p>21 such as that?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you believe that "actual cost" point</p> <p>3 raised in that bullet may reference President</p> <p>4 Clinton's proposal that reimbursement of</p> <p>5 outpatient drugs be based on actual cost rather</p> <p>6 than AWP?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I do not know.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Does reviewing the article in any way</p> <p>11 refresh your recollection about the actual cost</p> <p>12 issue?</p> <p>13 A. I would have read this and said,</p> <p>14 "Actual cost would never be approved."</p> <p>15 Q. Why would you say that?</p> <p>16 A. I spent nine years in manufacturing</p> <p>17 accounting. You can get 40 cost accountants on</p> <p>18 the head of a pin, and they will never agree on</p> <p>19 actual cost.</p> <p>20 Q. Because each one of them would have a</p> <p>21 different definition for --</p> <p>22 A. Yes, sir.</p>

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